

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DARIN POOLE,

Plaintiff,

- against -

DEPARTMENT OF CORRECTIONS,
OFFICER FIGUEROA,
CAPTAIN RIVERA

Defendants.
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: **MEMORANDUM AND ORDER**
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: 08 Civ. 7552 (NRB)
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: **USDS SDNY**
: **DOCUMENT**
: **ELECTRONICALLY FILED**
: **DOC #:**
: **DATE FILED: 8/24/09**

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

The Court received a letter from Plaintiff on August 11, 2009. We construe this letter as requesting, inter alia, that this Court provide Plaintiff with counsel pursuant to 28 U.S.C. § 1915(e). When deciding whether to appoint a lawyer for an indigent party in a civil action, the following criteria are applied: (1) the merits of the party's claims; (2) ability to pay; (3) plaintiff's efforts to obtain a lawyer; (4) the availability of a lawyer; and (5) plaintiff's ability to gather and deal with the relevant facts. See Cooper v. A. Sargenti Co., 877 F.2d 170, 172 (2d Cir. 1989). The threshold requirement is a showing of sufficient likelihood of success on the merits to warrant the appointment of counsel. See, e.g., McDonald v. Head Criminal Court Supervisor Officer, 850 F.2d 121 (2d Cir. 1988). When evaluating the merits, pro se complaints

are held to a less stringent standard. Haines v. Kerner, 404 U.S. 519 (1972).

Based upon the record submitted to date, I cannot conclude that plaintiff has demonstrated a likelihood of success on the merits that would support the appointment of counsel. Thus, the application is denied without prejudice to reconsideration at a later time should future developments warrant a different result.

IT IS SO ORDERED.

DATED: New York, New York
August 21, 2009

A handwritten signature in black ink, appearing to read "Naomi Reice Buchwald", is written over a horizontal line.

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE